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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 73-78

MEL KAHN, etc.,
Appellants,

vs.

ROBERT L. SHEVIN, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

MOTION TO DISMISS OR AFFIRM

ROBERT L. SHEVIN
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Capitol Building
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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of this Court Appellees file this motion to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Florida on the ground that it does not present a substantial federal question.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

The Statute

Florida Statutes §196.191(7) [amended and renumbered as Fla. Stat. §196.202 (1971)] is the statutory expression of the mandatory, self-executing tax exemption provision of Fla. Const. Art. VII, §3(b), which grants an exemption from taxation for property to the value of $500.00 owned by persons in certain enumerated categories. This exemption is extended to persons who are blind, persons who are totally and permanently disabled, and to widows. The exemption has been extended to widows since the adoption of Fla. Const. Art. IX, §9 (1885). As noted by the court below, the term "widow" as used in the subject statutory and constitutional provisions is limited to "a woman who has lost her husband by death." Shevin v. Kahn, 273 So.2d 72, 73 (1973).

B.

The Proceedings Below

The Appellant, a widower, filed a Complaint for Declaratory Relief in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. He alleged that the denial of his application for a $500.00 property tax exemption under Fla. Stat. §196.191(7) deprived him and others similarly situated of equal protection and due process of law by the language and application of the statute which limits the exemption to widows. The Circuit Court ruled in Appellant's favor and a timely appeal was taken to the Supreme Court of Florida, which reversed the judgment of the Circuit Court and held that there was a reasonable relationship between the objective of reducing the disparity between the economic capabilities of men and women and the means used to achieve that objective in affording to women who have lost a spouse by death a slight tax advantage, and thus Fla. Stat. §196.191(7) is constitutionally valid.

II.

ARGUMENT

This appeal presents no substantial federal question warranting review by this Court.

It is well settled that in the field of taxation, a State may draw lines that treat one class of individuals different

from others without violating the Equal Protection Clause of the Fourteenth Amendment. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973). See also Lawrence v. State Tax Commission of the State of Mississippi, 286 U.S. 276 (1932); Madden v. Kentucky, 309 U.S. 83 (1940); and Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959). The only limitation upon such distinctions is that the difference in treatment may not constitute an "invidious discrimination." Lehnhausen v. Lake Shore Auto Parts Co., supra, at 359.

The test approved unanimously by this Court in Reed v. Reed, 404 U.S. 71 (1971), for statutes which make classifications upon the basis of sex, is whether such a classification "bears a rational relationship to a state objective that is sought to be advanced by the operation of" the statute. Id. at 76. The majority of this Court was unwilling to apply a stricter test only last term in Frontiero v. Richardson, -- U.S. --, 93 S.Ct. 1764, 36 L.Ed. 2d 583 (1973).

According to the Florida Court, the objective sought by Fla. Stat. §196.191(7) and its constitutional counterpart is "to reduce to a limited extent the tax burden on widows who own property to the value of $500 and . . . thereby to 'reduce the disparity between the economic . . . capabilities of a man and a woman,' . . . . Shevin v. Kahn, supra, at 73. Such disparity has been judicially recognized as providing a rational basis for affording women treatment more favorable than men under the Social Security Act. Gruenwald

v. Gardner, 390 F.2d 591 (2d Cir. 1968), cert. denied, 393 U.S. 982. Statistics from the 1970 national census indicate the factual considerations underlying the distinction made in Fla. Stat. §196.191(7). In Florida in 1969, of families which had a male head of the household, 9.8% were below the poverty level, while of those which had a female head, 35.8% were below the poverty level. U.S. Bureau of the Census, Census of Population: 1970, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS, Final Report PC(1)-C11 Florida, April, 1972, at 203. The mean income in 1969 for all Florida families was $10,120, while that for Florida families with a female head of the household was only $5,718. Id. at 233. Florida also has a much higher percentage of widows than widowers. In 1970, of males aged 14 years and over, 3.4% were widowers, while 14.0% of the females in the same age group were widows. U.S. Bureau of Census, Census of Population: 1970, DETAILED CHARACTERISTICS, Final Report PC(1)-D11 Florida, October, 1972, at 679-80. Thus, unlike Reed v. Reed, supra, the considerations underlying the exemption provided by the Florida Constitution and Fla. Stat. §196.191(7) are not "merely to accomplish the elimination of hearings," id. at 76, or "for the sole purpose of achieving administrative convenience," Frontiero v. Richardson, supra, 93 S.Ct. at 1772, 36 L.Ed. 2d at 594.

III.

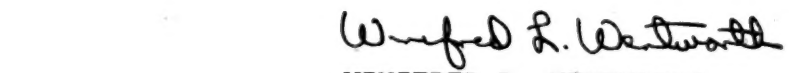
CONCLUSION

Wherefore, Appellees respectfully

submit that the questions upon which this cause depend are so unsubstantial as not to need further argument, and Appellees respectfully move the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Florida.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I, Winifred L. Wentworth, a member of the Bar of the Supreme Court of the United States, and of counsel for Appellees herein, hereby certify that I have this day served three (3) printed copies of the foregoing Motion to Dismiss or Affirm on the Appellant herein, by depositing same in a United States Post Office with first class postage prepaid addressed to counsel of record for the Appellant as follows:

Bill Hoppe
Counsel for Appellants
Second Floor, Concord Building
Miami, Florida 33130

DONE this the 27th day of September, 1973.

ROBERT L. SHEVIN
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